

THEODORE J. BOUTROUS JR., SBN 132099  
tboutrous@gibsondunn.com  
THEANE D. EVANGELIS, SBN 243570  
tevangelis@gibsondunn.com  
DHANANJAY S. MANTHRIPRAGADA, SBN 254433  
dmanthripragada@gibsondunn.com  
JUSTIN T. GOODWIN, SBN 278721  
jgoodwin@gibsondunn.com  
GIBSON, DUNN & CRUTCHER LLP  
333 South Grand Avenue  
Los Angeles, CA 90071-3197  
Telephone: 213.229.7000  
Facsimile: 213.229.7520

Attorneys for Defendants GRUBHUB  
HOLDINGS INC. and GRUBHUB INC.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

ANDREW TAN and RAEF LAWSON in their  
capacities as Private Attorney General  
Representatives, and RAEF LAWSON,  
individually and on behalf of all other similarly  
situated individuals,

Plaintiffs,

v.

GRUBHUB HOLDINGS INC. and  
GRUBHUB INC.,

Defendants.

CASE NO. 3:15-cv-05128-JSC

**DECLARATION OF STAN CHIA IN  
SUPPORT OF DEFENDANTS' MOTION TO  
DENY CLASS CERTIFICATION**

Hearing:

Date: July 13, 2016

Time: 1:30 p.m.

Place: Courtroom F

Judge: Hon. Jacqueline Scott Corley

Action Filed: September 23, 2015

1 I, Stan Chia, declare as follows:

2 1. I am currently employed as the Senior Vice President of Operations for Grubhub  
3 Holdings Inc. (formerly known as Grubhub, Inc.), which is a wholly owned subsidiary of Grubhub  
4 Inc. I make this declaration in support of Defendants Grubhub Holdings Inc. and Grubhub Inc.'s  
5 Motion to Deny Class Certification. I am authorized to make these statements on behalf of Grubhub  
6 Holdings Inc. ("Grubhub"). In my position as Senior Vice President of Operations for Grubhub, I  
7 have access to and personal knowledge of the matters and information set forth in this declaration,  
8 and if called upon to testify thereto, can and would competently do so. The data from which the  
9 information set forth in this declaration was determined is maintained in the regular course of  
10 Grubhub's business.

11 2. I have reviewed the Second Amended Complaint filed in the above-captioned case. I  
12 understand that Mr. Lawson seeks to represent a class of "all GrubHub drivers who have worked in  
13 California."

14 3. Grubhub is an online and mobile food ordering company that connects diners with  
15 local takeout and delivery restaurants through its website and associated mobile applications  
16 (collectively, the "Grubhub Service"). The Grubhub Service is primarily maintained out of  
17 Grubhub's headquarters in Chicago, Illinois. Starting in or around June 2014, diners in California  
18 could use the Grubhub Service to arrange for delivery of food orders from restaurants by Independent  
19 Delivery Partners ("Grubhub Delivery"). Grubhub Delivery is available in dozens of cities. The  
20 Grubhub Service, along with Grubhub Delivery, shall be referred to herein as collectively the "Online  
21 Platform."

22 4. Diners place food orders with restaurants through Grubhub's Online Platform.  
23 Independent Delivery Partners, such as Plaintiffs Andrew Tan and Raef Lawson, contract with  
24 Grubhub to become authorized to use Grubhub's Online Platform to deliver these food orders from  
25 the restaurants to the diners in exchange for service fees.

26 5. In order to become authorized to use Grubhub's Online Platform, Independent  
27 Delivery Partners enter into Delivery Service Provider Agreements with Grubhub.  
28

1           6.       After a driver expresses interest in providing delivery services using the Grubhub  
2 Online Platform, Grubhub sends the driver a Delivery Service Provider Agreement through  
3 DocuSign, a program that facilitates the electronic exchange of contracts and signed documents.

4           7.       Delivery Service Provider Agreements signed by Independent Delivery Partners are  
5 stored by Grubhub in both DocuSign and the Independent Delivery Partners' profiles on Salesforce, a  
6 customer relationship management database.

7           8.       Attached hereto as Exhibits 1-6 are true and correct copies of representative examples  
8 of all Delivery Service Provider Agreements executed by Independent Delivery Partners located in  
9 California. Various Independent Delivery Partners also entered into an amendment to their Delivery  
10 Service Provider Agreements. A true and correct copy of a representative example of this  
11 Amendment is attached as Exhibit 7.

12           9.       The Delivery Service Provider Agreements govern the relationship between Grubhub  
13 and the Independent Delivery Partners, and establish the terms applicable to all delivery services  
14 arranged by Grubhub and performed by the Independent Delivery Partners.

15           10.      All Delivery Service Provider Agreements entered into by Independent Delivery  
16 Partners located in California expressly state that the parties intend the Agreements to create the  
17 relationship of principal and independent contractor between Grubhub and the Independent Delivery  
18 Partner, Exh. 1 at § 7; Exh. 2 at § 7; Exh. 3 at § 7; Exh. 4 at § 7; Exh. 5 at § 6; Exh. 6 at § 6, and that  
19 the parties are not employees, agents, joint venturers, or partners of each other for any purpose. Exh.  
20 1 at § 7; Exh. 2 at § 7; Exh. 3 at § 7; Exh. 4 at § 7. When executing the Delivery Service Provider  
21 Agreements, Independent Delivery Partners acknowledge (by initialing) that they understand the  
22 Agreements to create the relationship of principal-independent contractor, not employer-employee.  
23 Exh. 1 at § 7; Exh. 2 at § 7; Exh. 3 at § 7; Exh. 4 at § 7; Exh. 5 at § 6; Exh. 6 at § 6.

24           11.      The Delivery Service Provider Agreement initially used by Grubhub in California  
25 after the launch of its Online Platform in that state in or around June 2014 contains an arbitration  
26 agreement with a class action waiver. Exh. 1 at § 14. All subsequent Delivery Service Provider  
27 Agreements entered into by Independent Delivery Partners located in California contain substantially  
28 similar arbitration agreements with class action waivers. Exh. 2 at § 14; Exh. 3 at § 14; Exh. 4 at

§ 14; Exh. 5 at § 12; Exh. 6 at § 12. These provisions apply to all disputes between the Independent Delivery Partners and Grubhub, including all claims arising out of or relating to the Independent Delivery Partners' independent contractor classification, the Independent Delivery Partners' provision of delivery services, and any other aspects of the relationship between Grubhub and the Independent Delivery Partners. Exh. 1 at § 14; Exh. 2 at § 14; Exh. 3 at § 14; Exh. 4 at § 14; Exh. 5 at § 12; Exh. 6 at § 12.

12. All Delivery Service Provider Agreements entered into by Independent Delivery Partners located in California state that, "[u]nless applicable law provides otherwise, as determined by the Arbitrator, the Parties agree that GrubHub [shall/will] pay all of the Arbitrator's fees and costs." Exh. 1 at § 14; Exh. 2 at § 14; Exh. 3 at § 14; Exh. 4 at § 14; Exh. 5 at § 12; Exh. 6 at § 12.

13. All Delivery Service Provider Agreements entered into by Independent Delivery Partners located in California state that the Independent Delivery Partner has a "[r]ight [t]o [c]onsult [w]ith [a]n [a]ttorney." Exh. 1 at § 14; Exh. 2 at § 14; Exh. 3 at § 14; Exh. 4 at § 14; Exh. 5 at § 12; Exh. 6 at § 12.

14. Starting in or around July 2015, the Delivery Service Provider Agreements entered into by Independent Delivery Partners located in California have provided Independent Delivery Partners the right to opt out of the arbitration agreement and class action waiver provisions contained therein. Exh. 4 at § 14; Exh. 5 at § 12; Exh. 6 at § 12. The Delivery Service Provider Agreements state that Independent Delivery Partners electing to opt out of the arbitration agreement and class action waiver provisions should express their intention to do so in either an email sent to a specific Grubhub email address or a written notice sent to Grubhub at 111 W. Washington St., Ste. 2100, Chicago, IL 60602, Attn: People Team, or such other address as may be communicated by Grubhub. Exh. 4 at § 14; Exh. 5 at § 12; Exh. 6 at § 12.

15. Grubhub tracks, and maintains records of, the written notices that it receives from Independent Delivery Partners electing to opt out of the arbitration agreement and class action waiver provisions contained in the Delivery Service Provider Agreements. These records are made at or near the time of the events in question and are maintained in the ordinary scope of Grubhub's business operations.

1           16. After Grubhub receives written notification of an Independent Delivery Partner's  
2 election to opt out of the arbitration agreement and class action waiver provisions of his or her  
3 Delivery Service Provider Agreement, the Independent Delivery Partner's election to opt out is  
4 notated in the driver's Salesforce profile. The original opt-out notice sent by the Independent  
5 Delivery Partner is also attached to his or her Salesforce profile, which must be manually reviewed.

6           17. Mr. Tan entered into a Delivery Service Provider Agreement with Grubhub on May  
7 29, 2015 (the "May 29, 2015 Agreement"). Attached hereto as Exhibit 8 is a true and correct copy of  
8 the May 29, 2015 Agreement and related documents. Mr. Tan entered into a second Delivery Service  
9 Provider Agreement with Grubhub on July 9, 2015 (the "July 9, 2015 Agreement"). Attached hereto  
10 as Exhibit 9 is a true and correct copy of the July 9, 2015 Agreement and related documents.

11           18. The May 29, 2015 Agreement and July 9, 2015 Agreement both contain arbitration  
12 agreement and class action waiver provisions. Exh. 8 at § 14; Exh. 9 at § 14.

13           19. Mr. Lawson entered into a Delivery Service Provider Agreement with Grubhub on  
14 August 28, 2015 (the "August 28, 2015 Agreement"). Attached hereto as Exhibit 10 is a true and  
15 correct copy of the August 28, 2015 Agreement. Mr. Lawson entered into an Amendment to the  
16 August 28, 2015 Agreement with Grubhub on December 5, 2015 (the "December 5, 2015  
17 Amendment"). Attached hereto as Exhibit 11 is a true and correct copy of the December 5, 2015  
18 Amendment. Mr. Lawson entered into another Delivery Service Provider Agreement with Grubhub  
19 on March 11, 2016 (the "March 11, 2016 Agreement"). Attached hereto as Exhibit 12 is a true and  
20 correct copy of the March 11, 2016 Agreement.

21           20. The August 28, 2015 Agreement and March 11, 2016 Agreement contain arbitration  
22 agreement and class waiver provisions. Exh. 10 at § 14; Exh. 12 at § 12.

23           21. Based on my review of company records, Mr. Lawson opted out of the arbitration  
24 agreement and class action waiver provisions contained in the August 28, 2015 Agreement in an  
25 email sent to Grubhub dated August 31, 2015. Based on my review of company records, Mr. Lawson  
26 opted out of the arbitration and class action waiver provisions contained in the March 11, 2016  
27 Agreement in an email sent to Grubhub on March 12, 2015.

28

22. Based on my review of company records, one Independent Delivery Partner in California other than Mr. Lawson has submitted a written notice opting out of the arbitration agreement and class action waiver provisions in that Independent Delivery Partner's Delivery Service Provider Agreement.

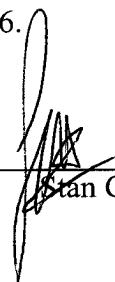
23. Based on my review of company records, Mr. Tan did not opt out of the arbitration and class action waiver provisions contained in the May 29, 2015 Agreement and the July 9, 2015 Agreement.

24. Other than the two individuals identified in paragraphs 21 and 22, Grubhub's records indicate that no other Independent Delivery Partners in California have submitted written notices opting out of the arbitration agreement and class action waiver provisions in their Delivery Service Provider Agreements.

25. Based on my review of company records, during the period June 2014 to the date of this declaration, thousands of Independent Delivery Partners in California have contracted with Grubhub to use its Online Platform to deliver food orders to diners.

I declare under penalty of perjury pursuant to the laws of the United States of America that the foregoing is true and correct.

Executed at Chicago, Illinois, on this 2nd day of June, 2016.

  
\_\_\_\_\_  
Stan Chia